solicitors cannot contract with the estate; they have no lien on the estate; they can only get a lien by means of some proper agreement with the trustee. There had been no agreement whatever entered into. The trustee himself was a defaulter; he was unable to make any payment; he could not in any way resort to the trust estate for the payment of his costs, because he had already in his hands a large sum which he ought to have applied in the payment of the costs, and Mr. Justice North held that under the circumstances the solicitors could stand in no better position than the trustee. I confess that I cannot see how that decision can be quarrelled with in any way."

The position then is this:—that two distinguished Judges of the Chancery Division of the Supreme Court of England have laid it down that solicitors for trustees cannot contract with the trust estate, and have no lien thereon for the costs owing to them by the trustees. I have searched the English & Empire Digest and Mew's Digest to see whether I could find any instance of judicial dissent from that opinion, but without success. On the other hand I have found a clear endorsement of it in the judgment of Chitty L.J in *In re Humphreys*[6]. It seems to me, therefore, that whatever assumptions we may make in Mr. Salt's favour we must dismiss his appeal.

Before I close I should perhaps, mention the case of *Meguerditchian v. Lightbound*[13], in which the Court of Appeal in England laid it down that a solicitor does not acquire any lien on the fruits of a mere negotiation without litigation. I confess that this case came somewhat as a surprise to me, but the principle underlying that decision appears to be embodied in the following passage in the judgment of Bankes L.J. at page 308:—

"On the question of law it seems to me quite impossible to contend successfully that the rule of law which has been hitherto applied to the solicitor's lien in respect of property recovered can be applied to a case such as this. Mr. Leslie Scott has claimed that the underlying principle should be applied to it. With great respect to him, I can see a very good reason why the principle should be applied in cases where there are proceedings, whether they consist of an action or arbitration, but I can see very good reasons why they should not be applied when the solicitors are left free to take whatever course they choose in order to secure a compromise."

At any rate it seems to offer yet another reason why this appeal should be dismissed, and with costs.

Lest there should be any misunderstanding I desire to place on record my view that this case in no way reflects on Mr. Salt's professional honour and integrity. He has made a mistake as to his legal rights and obligations, that is all; and many another solicitor has made such mistakes in the past and will doubtless do so in the future.

Appeal dismissed.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.

F. M. S. REPORTS.

RE LOOI GUAN KWAY; EX PARTE LOW SAY HOOI.

[O.C.J. (Murray-Aynsley, J.) Nov. 29, 1940]

Bankruptcy Enactment (Cap. 55), section 123—Civil Procedure Code (Cap. 7), section 287—1932 Rule No. 4, sub-rules 69 and 70—Bankruptcy notice—Insufficient address—Final decree—Failure to set-off.

The debtor took the following objections to the bankruptcy petition:

(i) that the bankruptcy notice did not give the place of business of the solicitor suing out the same;

(ii) that the bankruptcy notice was founded upon an order for costs in proceedings in which the creditor was a defendant, and as the amount found on taxation had merely been endorsed on the decree in the form of a certificate signed by the Assistant Registrar there was no final decree upon which a bankruptcy notice could be issued;

(iii) that the creditor had failed to give credit for a set-off for costs in an interlocutory appeal in the same proceedings in which the debtor was successful.

Held, as to (i), that as the debtor was not inconvenienced by the omission the objection came within section 123 of the Bankruptcy Enactment and was invalid.

As to (ii), the matter is covered by local legislation, namely, the Civil Procedure Code, section 237 and 1932 rule No. 4, sub-rules 69 and 70 and the objection was bad.

As to (iii), as no arrangement for set-off was arrived at until after the bankruptcy petition had been served, the objection was unfounded.

B. K. Das for petitioning creditor.

S. M. Sharma for debtor.

Murray-Aynsley, J.—In this case the debtor disputes the validity of the petition. The objections are set out in a notice dated 23rd August, 1940. The first objection is that the notice did not give the place of business of the solicitor suing out the same. The solicitor in question certainly did fail to give his place of business. It is equally certain that the debtor was not inconvenienced by the omission, because his solicitor gives the name and address of the firm of the creditor's solicitor in this notice of 23rd August. I think that the point is within the scope of section 123.

The second point is whether there was a "final decree" against the debtor. The facts in the present case are that the petitioning creditor had obtained against the debtor a judgment for costs in an action in which the petitioning creditor was defendant. The

final decree recited this order for costs in the following terms:—

"And it is ordered that the costs of the respective first, second, fourth and fifth defendants as between party and party be taxed on the higher scale and paid by the plaintiff to the defendants respectively."

These costs were taxed and the amount found due on taxation was endorsed on the decree in the form of a certificate by the Assistant Registrar.

This I am told by the Assistant Registrar, Ipoh, is the usual practice in the Federated Malay States.

On behalf of the debtor it was contended that this was insufficient and that a final decree should have been drawn for the amount of the allocatur, and until this was done there was no final decree.

English cases were cited but I think that the matter is concluded by the terms of the local legislation, i.e, Civil Procedure Code, section 237, and rule 4 of 1932 (sub-rules 69 and 70) particularly sub-rule 70. In view of these I consider that the point raised by the debtor is bad.

The third objection alleges that the petitioning creditor failed to give the debtor credit for a set-off for costs in an interlocutory appeal in the same proceedings in which the debtor was successful.

The facts are as follows: On the hearing of the appeal the debtor was awarded costs against several of the defendants with the result that there was a debt owing by such defendants jointly and severally to the debtor. After the serving of the bankruptcy petition, but before the notice of 23rd August, an arrangement was come to, to which the debtor was a party by which the costs of the appeal were to be set-off against the costs payable by the debtor to another defendant in the suit as the result of which on 10th August, 1940, satisfaction was entered for the costs of the appeal. In view of this, in my opinion, the objection by the debtor is unfounded.

These were all the objections that were pressed by the debtor except one headed "C" consideration of which was deferred.

Application dismissed.

MAN LEE LOONG KONGSI vs. KWONG LOONG MINING KONGSI & ANOR.

[Civ. Juris. (Murray-Aynsley, J.) Feb. 1, 1940]

Civil Procedure Code (Cap. 7), section 497.—Order to permit boring and prospecting of mining land —On an enquiry as to damages an order under section 497 of the Civil Procedure Code can be made permitting the boring and prospecting of mining land.

The first defendants were sublessees of a mining lease and had made an oral agreement with the plaintiffs as a result of which the plaintiffs had mined part of the lands occupied by the first defendants on terms which included an obligation on the first defendants to supply and work an engine for pumping water in order to enable the plaintiffs to work the land. In other proceedings the second defendant was appointed Receiver and Manager of the business of the first defendants and, soon after such appointment, the second defendant, through his solicitors, gave notice to the plaintiffs that he did not wish to continue the contract. The first defendants afterwards stopped their engine thereby cutting off the water supply required by the plaintiffs to work the land. The plaintiffs sued the defendants for breach of contract and judgment was given in favour of the plaintiffs, the judgment of the Court including an order that an enquiry be held as to the damage suffered by the plaintiffs by reason of the wrongful termination of the agreement. The plaintiffs then applied by summons to proceed with the enquiry and in the course of this enquiry the plaintiffs applied by summons for an order that their consulting engineers be permitted to bore and prospect the land affected by their agreement and to prove and take samples from the said land.

Cases referred to:—

(1) *Dhomey Dhur Ghose v. Radha Vobind Kur* 4 Cal. 117.

(2) *Bennitt v. Whitehouse* 54 E.R. 311.

(3) *Lumb v. Beaumont* 27 Ch. D. 356.

(4) *Cooper v. Ince Hall Co.* (1876) W.N. 24.

H. R. Rix for plaintiffs.

R. D. Hume (with him *J. M. M. Lewis*) for the defendants.

The application was dismissed with costs and the following reasons for decision were afterwards filed:

Murray-Aynsley, J.—The application in this case was a novel one and counsel for the plaintiffs was unable to quote any precedent. It seemed to me that it was rather analogous to the application usually made by defendants for a medical examination of an injured plaintiff. I have always understood and it is the prevailing opinion that the defendants cannot insist on this but refusal may result in an adverse inference.

In the present case the examination desired by the plaintiffs would be of value, not in estimating the amount of tin which the plaintiffs might have extracted, since this depends on the quota for the time being, but for estimating the cost of extracting such part of the quota as might have fallen to the plaintiffs. The cost of the enquiry asked for would however have been very heavy as it would entail borings over the whole mine, and no examination without borings is worth anything. Apart from this I would have been in favour of the plaintiffs' application if I had power to accede to it.